SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 328

MOORE-McCORMACK LINES, INC.,
Petitioner,

against

THE UNITED STATES,
Respondent.

BRIEF IN SUPPORT OF PETITION

Opinions Below

The opinions of the Court of Claims of the United States (per Whitaker, J.) are not reported but are set fourth in Transcript of Record.

Jurisdiction

The judgment of the Court of Claims of the United States sought to be reviewed was rendered on April 3rd, 1951, and a motion for a new trial was denied by an order entered on July 9th, 1951.

The jurisdiction of this Court is invoked under Title 28 United States Code, Section 1255.

Statement of Facts

The facts have been stated in the petition.

Specification of Errors

It is submitted that the Court below erred:

1. In refusing to render judgment in favor of the petitioner in the additional sum of $32,043.43 for compensation for carrying Brazilian mail from Brazilian ports to ports of the United States on the same vessels on which United States mail had been carried to Brazilian ports after June 3, 1941.

2. In finding and adjudging that the petitioner was obliged to carry Brazilian mail on its vessels from Brazilian ports to ports of the United States gratuitously after the enactment of Brazilian Decree No. 3.326 on June 3, 1941.

3. In finding and adjudging that the United States was not obligated to pay the petitioner, under the terms of the Postal Convention, for mail carried on its vessels from Brazilian ports to ports in the United States after June 3, 1941.

Summary of Argument

The petitioner (who in this case is representative of every operator of United States vessels from the United States to Brazil and carrying mails) is entitled to receive compensation from the United States under the Convention and Agreement Relative to Parcel Post, Panama, December 22, 1936 (Fourth Congress of the Postal Union of the Americas and Spain) for the carriage of Brazilian mails on its vessel.

The United States having, by treaty and convention, undertaken to play the part of Lady Bountiful should not renege on its obligations and leave the carrier without compensation for its services.

ARGUMENT

Brazilian Decree No. 3326 of June 3, 1941 does not affect the obligation of the United States under the Convention and agreement relative to parcel post, Panama, December 22, 1936 (Fourth Congress of the Postal Union of the Americas and Spain) to pay for the carriage of Brazilian mails on the claimant's vessels.

I

(1)

The Court below has completely ignored a basic rule of law.

(a)

That Federal rule is as follows:

> "In the absence of any judicial decisions which determine the construction and effect of a foreign law, the practical interpretation given to it by those whose duty it was to apply and administer it affords the best means of ascertaining its true meaning. Unless, therefore, it be clear that the officers charged with its administration have misconstrued it, a foreign court, with necessarily an imperfect acquaintance with the subject, ought to be slow to substitute its own construction of the law for that of the government which established it."
>
> *United States* v. *Sherebeck,* 17 Fed Cases, page 1063, Case No. 16275.

A like rule has the approval of textbook writers:

> "In the absence of any judicial decision determining the construction of a foreign statute, the practical interpretation given it by those whose duty it has been to apply and administer it affords the best means of ascertaining its true construction; and such construc-

tion will be followed, unless it be clear that it is erroneous."

59 *Corpus Juris,* 1033.

Brazilian Courts have never passed upon the question involved in this case. Why should they?

The Brazilian Government (through its Postmaster General whose duty it was to direct the transportation of Brazilian mails and therefore "whose duty it was to apply and administer" the decree in question) invoked the Postal Convention and officially stated "that the advantages granted (to this petitioner) do not make such transportation compulsory." The Postmaster General of Brazil so declared to the Postmaster General of the United States *both before and after the Decree of June 3, 1941.* (See Court of Claims special finding of fact number 12).

(2)

The Federal Rule as to the construction of Federal Statutes is to the same effect and supports in every way the rule of law which should be applied in this case.

"We have said that, when the meaning of a statute is doubtful, great weight should be given to the construction placed upon it by the department charged with its execution."

Robertson v. *Downing,* 127 U. S. 607.

"The situation therefore calls for the settled rule that the practical application of an ambiguous or uncertain statute by the Executive Department charged with its administraiton is entitled to the highest respect, and, if acted upon for a number of years, will not be disturbed except for very cogent reasons."

Logan v. *Davis,* 233 U. S. 613, 627.

See also:

Swendig v. *Washington Co.,* 265 U. S. 322;

Brewster v. *Gage,* 280 U. S. 327.

(3)

The Court below has ignored or overlooked the most important fact which it has found as a special finding. Upon the basis of its Special Finding of Fact No. 12 its decision in this case cannot be sustained. And in all equity and justice it should not.

II

The United States is under the obligation to convey by ships of its registry or flag (in this case the petitioner's ships), which it (the United States) utilizes for the transportation of its own correspondence, without any charge whatsoever to the contracting countries (in this case Brazil), all that which the latter (Brazil) sends to any destination; and the decree of June 3, 1941, under no circumstances can affect the obligation of the United States.

The Postal Convention is the law of the United States; the Convention has never been disavowed—on the contrary it has been "reinforced by the same article and paragraph of the Postal Convention held in Rio de Janeiro in 1946" (Finding No. 12).

A treaty will not be deemed to have been abrogated nor modified by a later statute unless such purpose has been clearly expressed.

Chew Heong v. *United States*, 112 U. S. 536;
Cook v. *United States*, 288 U. S. 102, 120.

No United States statute, no treaty nor convention has changed this Postal Convention.

The petitioner in this case has the right to look to the United States for payment for the carriage of Brazilian mail which under convention and law the United States has obligated itself to carry on the petitioner's vessel. For such carriage and service the United States is bound to pay.

So far as any Brazilian statute is concerned, unless it abrogates the Convention (which it does not), the United States cannot avoid the obligation it has incurred under the Convention. The Convention remains supreme.

III

The opinion of the Court of Claims upon the motion for a new trial does not follow the general rules of statutory construction.

In disposing of the translation by a certified Brazilian translator of the decree which is involved, the Court says:

> "Our decision would probably have been the same had plaintiff's translation of the decree been before us. According to this translation, Article 2 relates only to Federal, State and Municipal transportation companies; but in paragraph 1 under Article 2 the translation reads:
>
> 'The transportation shall likewise be obligatory and gratuitous as regards railroads and companies or enterprises engaged in navigation or highway traffic which enjoy special treatment, benefits or favors from the Union, the States or the Municipalities.'
>
> "It is admitted that plaintiff did enjoy special treatment from the Union, and, therefore, presumably it comes within the companies mentioned in paragraph 1 of Article 2." (Opinion of Court of Claims on Motion for New Trial.)

Paragraph 1 is a subordinate subdivision of Article 2 and by the usual and ordinary rules of construction does not extend the statute beyond Brazilian categories which are the limits of Article 2. It clearly refers to Brazilian "enterprises".

Although repetitious but so the "decree" may be before the Court, we quote:

> "Article 2. It shall be obligatory for all Federal, State and Municipal enterprises or companies engaged

in river, lake and maritime navigation, or in the operation of railroads, to transport postal despatches and articles of correspondence gratuitously, without limitation on weight or volume.

"Paragraph 1. The transportation shall likewise be obligatory and gratuitous as regards railroads and companies or enterprises engaged in navigation or highway traffic which enjoy special treatment, benefits or favors from the Union, the States or the Municipalities."

Conclusion

A Writ of Certiorari Should Be Granted.

Dated: New York, N. Y., September 17th, 1951.

Respectfully submitted,

MELVILLE J. FRANCE,
Counsel for Petitioner.